

**(2008) 11 DEL CK 0166**

**Delhi High Court**

**Case No:** WPC No. 3552 of 1989

Dafedar Ram Singh

APPELLANT

Vs

Union of India (UOI)  
and Others

RESPONDENT

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**Date of Decision:** Nov. 6, 2008

**Hon'ble Judges:** Sanjay Kishan Kaul, J; Mool Chand Garg, J

**Bench:** Division Bench

**Advocate:** M.G. Kapoor, for the Appellant; Sonia Mathur, Pankaj Pasad and S.S. Pandey, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Sanjay Kishan Kaul, J.

The petitioner was initially enrolled in the Territorial Army on 13.1.1965 and was subsequently re-enrolled in the KUMAON Regiment of the Regular Army on 28.2.1966. The petitioner was re-mustered in the Armoured Corps in June, 1968. The petitioner earned his promotion as a Dafadar on 1.1.1982 and as per the petitioner was entitled for a further promotion to a Naib Risaldar. The vacancy for the Naib Risaldar arose on 18.1.1989 and a proposal was stated to have been sent in February/March on 1989. This proposal was, however, not accepted by the Records Office on account of the fact that the date of birth of the petitioner was 13.1.1947 and the petitioner was, thus, over age by 5 days. The petitioner made a representation to the Records Office on 5.6.1989 followed up by a statutory complaint dated 11.7.1989. There was no result and the petitioner was discharged on 20.7.1989 retrospectively from 30.6.1989. The statutory complaint filed by the petitioner was returned as unattended on 27.7.1989. The petitioner thereafter filed the present writ petition.

2. The controversy in the present case revolves around the date of birth of the petitioner. The date of birth of the petitioner is recorded as 13.1.1947 at the time of enrollment in the Territorial Army on the basis of his apparent age as the petitioner had not produced any document in proof of his age. However, at the stage when the petitioner got re-enrolled in

the Regular Army soon thereafter on 28.2.1966 the date of birth is recorded as 7.4.1947, that too also as apparent age. It may be noted that the case of the petitioner is that his age should have been recorded as 7.4.1948 but there are over-writings in the record to show that it was 7.4.1947. This date of 7.4.1947 is recorded in not only the records at the stage of the regular enrollment of the petitioner in the Army but also in various service documents including pay book, identity card, service and casualty form, sheet roll etc.

3. The facts set out by the petitioner in the statutory complaint show that the petitioner was advised to produce his school leaving certificate (hereinafter referred to as SLC), if any. The petitioner did produce an SLC showing the date of birth as 2.6.1948. However, the fact remains that the record was never corrected.

4. In the counter affidavit in the present writ petition there was a categorical denial by one Capt. J.R. Yadav, Record Officer, Armoured Corps to the effect that the petitioner had never produced the SLC. This was found contrary to the record as the petitioner produced the original letter dated 18.8.1989 received by him from the Record Office returning the SLC to the petitioner. The directions were thus passed on 6.3.2002 for Capt. J.R. Yadav to remain present and file his affidavit. The said Capt. J.R. Yadav had sought to explain the position by stating that when he looked at the record the SLC was not there and he was not aware that the same had been returned back to the petitioner. To say the least, this explanation is unsatisfactory. It was the duty of the Record Office to have correctly checked the records.

5. We have had the benefit of seeing the original record produced before us where the comments of the Department in relation to the statutory complaint of the petitioner are available even though the statutory complaint was returned unattended. This is one more unfortunate incident in the present case as it was the duty of the concerned officer to have dealt with the statutory complaint of the petitioner to come to a conclusion as to what should be the correct date of birth and the consequence thereof. The comments show that there was no entry existing in the field service documents relating to the enrollment of the petitioner with the Territorial Army. This would show that there is no proof of the date of birth of 13.1.1947 even as recorded with the respondents and the respondents have throughout proceeded on the basis of the date of birth of 7.4.1947.

6. In our considered view the most material aspect is that the respondents themselves have accepted the date of birth as 7.4.1947 and there is nothing to show that the petitioner was older than that age. The only question was whether the date of birth of the petitioner was required to be corrected when he produced the SLC which after due verification was returned to the petitioner. Since the SLC was called for and verified, normally the date of birth at that stage ought to have been corrected to the one set out in the SLC of 2.6.1948. We are not required to delve further into this matter for the reason that in so far the grievance of the petitioner is concerned, even if the date of birth of the petitioner is taken as 7.4.1947 which was recorded with the respondent, the petitioner was not over age at the relevant date for promotion to the post of Naib Risaldar.

7. The result of the aforesaid is that the petitioner has been improperly deprived of his promotion to the post of Naib Risaldar and further promotions subject to fitness. Petitioner was entitled to serve further till the date specified for retirement as Naib Risaldar.

8. The question of further promotions of the petitioner would, however, have been dependent on the fitness of the petitioner and in assessing as to what relief ought to be granted to the petitioner, certain uncertainties have to be kept in mind. We, thus, consider it appropriate to direct that the petitioner should be treated as having continuity in service till the retirement age of a Naib Risaldar and would be entitled to pay and allowances for the period he has been unable to serve due to the illegal action of the respondent. We are not granting any further relief in respect of any additional promotion which could have come the way of the petitioner if he had actually served as Naib Risaldar but we have balanced the equities by granting full pay and allowances to the petitioner for the period which he would have served as a Naib Risaldar even though he has not actually served for the said period. The pension of the petitioner would naturally have to be revised in the rank of Naib Risaldar.

9. A writ of mandamus is issued directing the respondents to treat the petitioner as having retired from service as a Naib Risaldar at the age specified for such retirement taking the date of birth of the petitioner as 7.4.1947 and to re-work out the pensionary benefits of the petitioner to the post of Naib Risaldar taking into consideration the extended service for the said post. The arrears be remitted to the petitioner within a maximum period of 3 months.

10. The petition is allowed in terms aforesaid with costs quantified at Rs. 5000/-.